

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

**ROBIN SMITH,** )  
v. )  
**PLAINTIFF** )  
No. 2:12-cv-164-DBH  
SPURWINK SERVICES )  
**INCORPORATED,** )  
**DEFENDANT** )

## **REPORT OF PRE-FILING CONFERENCE UNDER RULE 56**

A pre-filing conference was held on January 3, 2013.

In this employment discrimination and failure to accommodate case, the defendant Spurwink Services has given notice of intent to file a motion for summary judgment on the issue of whether the ability to perform therapeutic holds was an essential function of the plaintiff's employment. The defendant recognizes that resolution of this issue would not be dispositive on any of the counts of the plaintiff's complaint, but suggests that it may shorten the trial by about three hours. Some evidence would still have to be introduced on the issue. The defendant's lawyer continues to deliberate on whether filing the motion is advisable, and took the procedural notice step because of the deadline. But before filing the motion he will respond to a pending settlement demand and give further thought to whether the time and effort of summary judgment is worth the effort here.

Both parties agree that the dispute on this issue is primarily legal, not

factual. As evidence that the ability to perform therapeutic holds was an essential job function, the defendant plans to present licensing standards and credentials, orientation and training materials, agency-wide and household records of therapeutic holds, and an affidavit as to the essential nature of the function. The plaintiff does not expect to dispute those materials, but to present different evidence on practices primarily through deposition testimony of the plaintiff and some of the managers concerning the necessity of the ability.

By February 8, 2013, the defendant shall file its motion if it chooses to file one. Response times and memoranda lengths are governed by the Local Rules. We did not discuss cross-filing, but if the parties are correct that there is no factual dispute, then cross-filing may be in order. **So ORDERED.**

**DATED THIS 3RD DAY OF JANUARY, 2013**

/s/ D. Brock Hornby  
**D. BROCK HORNBY**  
**UNITED STATES DISTRICT JUDGE**